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October 14, 2021

**BY FEDERAL EXPRESS AND ECF**

Honorable James L. Garrity, Jr.  
United States Bankruptcy Judge  
United States Bankruptcy Court  
Southern District of New York  
One Bowling Green  
New York, NY 10004

Re: Piazza v. Oldner, et al., Adv. Pro. No. 21-01180 (JLG)  
In re Orly Genger, Chapter 7 Case No. 19-13895 (JLG)

Dear Judge Garrity:

On September 30, 2021, Your Honor held a telephonic conference, whereby the Trustee consented to an extension of the response deadline to the complaint in the above-referenced adversary proceeding to October 22, 2021. In the interim, counsel to Mr. Oldner committed to sending the Trustee a proposed stipulation which purported to define the scope of the Releases that are at issue in this adversary proceeding. I agreed that we would review any proposed stipulation and provide comments thereto. Your Honor requested a short letter from me by October 14, 2021 advising whether the parties were able to come to agreement on the terms of a stipulation to address the issues discussed at the telephonic conference.

Unfortunately, we did not see a form of the stipulation from Mr. Oldner's counsel until only two days ago, October 12, 2021. As I have been occupied with numerous cases, as well as with deadlines in this case, including the objection to Dalia's reconsideration motion in the constructive trust action due yesterday, I did not have a chance to turn to the stipulation until today. Nonetheless, we have quickly considered the form of stipulation sent to us and I delivered a blackline to counsel to the various defendants earlier today. A form of the blacklined stipulation is annexed hereto. I now await a response from counsel to Defendants on the form of stipulation. To the extent it is acceptable or a resolution on alternative language is reached by early next week, I will inform the Court accordingly. Otherwise, absent a resolution, the Trustee does not consent to any further extensions of the October 22, 2021 response deadline.

Honorable James L. Garrity

October 14, 2021

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By way of further update to the Court, on September 24, 2021, John Dellaportas, Esq delivered to me and my firm's general counsel a Rule 11 motion directed to the Trustee and my firm in connection with the Complaint and my correspondence to the Court on September 15, 2021 and September 22, 2021 filed in this adversary proceeding. We are in the process of preparing a response before tomorrow's 21 day safe harbor deadline. While we are hopeful that Mr. Dellaportas will withdraw his inappropriate threat of sanctions after seeing our response, to the extent he indeed files a frivolous motion, adding further costs to the estate, we will most certainly respond with a cross-motion for sanctions in response thereto.

Please do not hesitate to contact me should Your Honor have any questions.

Respectfully submitted,

/s/Rocco A. Cavaliere

Rocco A. Cavaliere

**UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF NEW YORK**

*In re* ORLY GENDER,  
Debtor.

Chapter 7

Case No. 19-13895 (JLG)

DEBORAH J. PIAZZA, as Successor  
CHAPTER 7 TRUSTEE, of the Bankruptcy  
Estate of Orly Genger,

Plaintiff,

v.

Adv. Pro. No. 21-01180 (JLG)

MICHAEL OLDNER, THE ORLY GENDER  
1993 TRUST, RECOVERY EFFORT INC.,  
SAGI GENDER, THE SAGI GENDER 1993  
TRUST, DALIA GENDER, ELANA  
GENGER, DAVID PARNES, D&K GP LLC,  
TPR INVESTMENT ASSOCIATES, INC.,  
MANHATTAN SAFETY MAINE, INC. and  
JOHN AND JANE DOES 1-100,

Defendants.

**STIPULATION**

**WHEREAS**, on August 15, 2019, the Orly Genger 1993 Trust (the “Orly Trust”), by its purported Trustee Michael Oldner, executed four Releases dated August 15, 2019 (collectively, the “Releases”), ~~“on behalf of the Orly 1993 Trust and any entity under The Orly 1993 Trust’s control (including, but not limited to, Recovery Effort Inc.),”~~ in favor of various parties including, inter alia, Dalia Genger, Sagi Genger, Elana Genger, David Parnes, The Sagi Genger 1993 Trust, D&K GP LLC, and TPR Investment Associates, Inc., which Releases are the subject of this Adversary Proceeding;

**WHEREAS**, by Complaint dated August 14, 2021 filed in the above-named adversary proceeding (the “Complaint”), Deborah Piazza, the Chapter 7 Trustee (“Piazza”), commenced this action, asserting, among other things, that the Releases are voidable post-petition transfers under section 549 of the Bankruptcy Code and violations of the automatic stay under section 362(a) of the Bankruptcy Code; alleging, inter alia, that “[t]he releases purport to release all claims of the Orly Trust and Recovery Effort against those Defendants as well as any claims of the Orly Trust’s beneficiaries, i.e., Debtor Orly Genger” (“Orly”) and that such action violated the automatic stay, 11 U.S.C. § 262, because “Oldner, in his individual capacity and in his capacity as the purported trustee of the Orly Trust and in his capacity as President of Recovery Effort Inc. has no authority to grant releases on Orly’s behalf”;

**WHEREAS**, Orly Genger is a beneficiary of the Orly Trust; by operation of the Releases, Oldner, as the Trustee of the Orly Trust, did not release any claims that Orly could directly bring on her own behalf to remedy her own injury (“Orly’s Direct Claims”); and

**WHEREAS**, the defendants understand that the Releases only release claims brought by the Orly Trust or, inter alia, by its beneficiaries to the extent they assert claims “on behalf of the Orly 1993 Trust and any entity under The Orly 1993 Trust’s control (including, but not limited to, Recovery Effort Inc.),” i.e., claims brought directly by the Orly Trust or claims brought derivatively on behalf of the Orly Trust or other entities under its control to remedy the Orly Trust’s or such other entity’s injuries (“Derivative Claims”);

**NOW, THEREFORE**, it is ~~respectfully~~ stipulated and agreed by the parties hereto as follows:

~~1. The Releases did not release (i) any claims that Orly has, individually and/or as beneficiary of the Orly Trust, against any party, including but not limited to claims that have not yet been filed, the claims pending in this action, and the claims pending in the actions captioned Orly Genger v. Dalia Genger, et al., (N.Y. Sup. Ct. N.Y. Cnty, Case No. 109749,2009 and N.Y. App. Div. 1<sup>st</sup> Dept. Appeal No. 2020-1940) and In the Matter of Application of Orly Genger to remove Dalia Genger as Trustee of the Orly Genger 1993 Trust, etc., Adv. Pro. No. 20-01187 (removed from N.Y. County Surrogate's Court, Case No. 2008-0017) or (ii) any damages arising from the foregoing claims. None of the defendants shall hereafter claim, in any forum, that Orly's Direct Claims have been released or discharged by virtue of the Releases;~~

~~2. The Complaint shall be deemed amended to only apply to the Derivative Claims and not Orly's Direct Claims; and~~

~~3. All parties reserve all their rights with respect to whether the release and discharge of Derivative Claims pursuant to the Releases violated the automatic stay.~~

Dated: October     , 2021  
New York, NY

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By: /s/ DRAFT

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*Counsel to the Orly Genger 1993 Trust,  
by its Trustee Michael Oldner;  
Recovery Effort Inc.; and  
Manhattan Safety Maine, Inc.*